Filed 10/19/09 Triumph Transport v. City of Bellflower CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TRIUMPH TRANSPORT, INC., Petitioner and Respondent, v. CITY OF BELLFLOWER et. al., Respondents and Appellants.	B209586 (Los Angeles County Super. Ct. No. BS110135)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Reversed.

Aleshire & Wynder, Joseph W. Pannone and June S. Ailin for Appellants.

Olivo & Placensia, Eduardo Olivo for Respondent.

The City of Bellflower (the City) appeals from judgment in Triumph Transport, Inc.'s (Triumph) action to compel the City to issue Triumph a business license to operate a truck yard. The City had imposed a moratorium which required truck yards to obtain a conditional use permit; the City contends here the trial court erred finding Triumph was entitled to a permit. We reverse.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. Proceedings Relating To The Issuance Of Soto's Business License And Adoption Of Ordinances Requiring A Conditional Use Permit.

Edwin Soto (Soto) is the president and sole shareholder of Triumph, a trucking company. In January 2007, Soto entered into a purchase agreement for property located at 9253 Artesia Boulevard in Bellflower located in the City's M-1 zoning area that he believed would be suitable for his business.[1] The property was a lot with two buildings, a residence (a legal non-conforming use) and an office. Although the property was zoned M-1, next to the property on either side was a trailer park and an apartment building.

On January 26, 2007, Soto informed the City that he wished to use the property for his "main office and parking storage for our trucks and trailers." He told the City the property would not be used for any kind of warehousing or distribution of freight, and that Triumph did business during regular business hours. The City informed Soto that in spite of the language of BMC section 19-122.2, subd. (e)(30), "it was not apparent" that Soto's use was a permitted use, and that it might require a conditional use permit.[2] In addition, City staff advised Soto to attend a Planning Commission meeting on February 5, 2007 at which time the Planning Commission would determine whether

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[1] At the time, Bellflower Municipal Code (BMC) section 19-12.2, subd. (e)(30) permitted a "draying, freighting or trucking yard or terminal" in the M-1 zone without the necessity of a conditional use permit.

[2] Soto learned that in 2002, the City had been faced with a similar business license application from a trucking company. After the City initially concluded that the use was not permitted because the business was actually "outside storage," the City's Planning Commission reversed that determination and found the business was permitted in the M-1 zone, and could operate without a conditional use permit.

"utilization of property for the 'outside storage of trucks and trailers' or 'trucking yard' constitutes a permitted use in the M-1 (Light Industrial District)."

The Planning Commission's staff report prepared for the February 5, 2007 meeting stated that, based upon Soto's business application, he intended to use the premises for a "trucking company [that] will be using the facility as [its] main office and parking storage for [its] trucks and trailers." The report noted that BMC section 19-12.2, subdivision (e)(30) permitted draying, freighting, or trucking yards or terminals, and subdivision (b)(61) permitted storage yards for transit and transportation equipment, except for freight classification yards. However, the report found that the BMC also identified as conditionally permitted uses "automobile storage or impound yards" (BMC § 19-12.3, subd. (h)), "outdoor sales, storage or activities, either as a primary use or accessory to a permitted use. . . ." (BMC § 19-10.3, subd. (44)), and outdoor storage occupying a volume of more than 60 cubic feet which is visible from the public street (BMC § 19-16.6, subd. (b)).

The report conceded that although the City had, in 2002, permitted a "trucking yard" to be permitted by right in the M-1 zone, the City now believed that the outdoor storage of trucks and trailers merited a conditional use permit. In addition, the proposed use required an eight-foot concrete block wall pursuant to BMC § 19-16.6, subd. (b). The report concluded that Soto's business was a "freight classification" yard pursuant to BMC § 19-12.2, subd. (b)(61), and recommended two options to the Planning Commission: (1) to determine that the "trucking yard" was a permitted use under M-1; or (2) to determine that the "trucking yard" required a conditional use permit.

The minutes of the Planning Commission's February 5, 2007 meeting reflect that the Commission discussed the 2002 permitted use as well as Soto's proposed use. Soto told the Commission that the Triumph's trucks made their pickups and deliveries off site, and returned in the evening empty; there would be no offloading or storage of freight at the facility. He anticipated that he would have about 10 trucks and that the trucks would not have any problem making U-turns on the premises. Soto advised the Commission he was currently in escrow for the sale of the property. Because the commission wanted to

retain control ("leverage") over the property, which they felt they could do with a conditional use permit, the Planning Commission voted to require Triumph to obtain a conditional use permit for the property. The minutes reflect a 10-day appeal period for the commission's decision. Triumph did not appeal.

On February 6, 2007, Soto filed an application for a business license with the City to use the property as a truck yard and truck terminal. On February 7, 2007, the City wrote to Soto and advised him that the Planning Commission had determined that utilization of the property for "outside storage of trucks and trailers" did not constitute a permitted use in the M-1 zoning area, but required a conditional use permit. The City advised Soto he had a right to appeal the decision within 10 days of the date of the letter; after that time the commission's decision would become final.

Brian Lee, the City's Community Development Director, asserted that as a result of Soto's discussions with the City in January 2007 regarding his proposed business license application and use of the property, Planning Department Staff requested that the Planning Commission provide an interpretation of the zoning ordinance evaluating whether Triumph's proposed use was permitted by right in the M-1 zone. At the February 5, 2007 meeting, the Planning Commission determined that the outside storage of trucks and trailers in the M-1 zone be conditionally permitted city wide. The next day, Soto submitted his business license application. The City did not process the application because Triumph did not own the property at the time, and because Soto did not have a certificate of zoning compliance.[3]

During March 2007, Soto went to Bellflower City Hall to check on the status of his application. Although he had submitted an application in February 2007, the City's Director of Community Service requested he fill out another application, but assured him

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[3] Zoning compliance "turns on whether a business is suited for the proposed location. The City considers the proposed use, the proximity and nature of neighboring properties, the zoning at the property, as well [as] any effects the applicant-business may have on surrounding areas. . . . In light of the Planning Commission's interpretation of the zoning ordinance, zoning clearance for the proposed used could not be given . . . . [because Triumph] did not have a conditional use permit. . . ."

that Soto's proposed use was permitted and his application would be approved. On March 21, 2007, Soto filed a duplicate business license application. Soto claims that on March 22, 2007, the City Planner Raphael Guzman informed him that he had approved the necessary zoning clearance and no additional information would be required, and that Soto should contact the City's business license clerk on March 27, 2007 to finalize issuance of the license.

Lee asserted that the City did not process Soto's March 21, 2007 business license application because neither Triumph nor Soto owned the property, nor did either have a conditional use permit.

On March 26, 2007, the City Council held a meeting, at which time it considered for adoption urgency Ordinance No. 1130 declaring a moratorium on draying, freighting, or trucking yards and/or terminals within the M-1 zone without a conditional use permit. The City's Community Development Staff's report noted that at the February 5, 2007 meeting, the City had determined that draying, freighting or trucking yards and/or terminals should require conditional use permits because trucking activity could create impacts to adjoining properties based on the physical characteristics of trucks and their ingress and egress challenges. Therefore, to control the potential for adverse impacts, City staff recommended reviewing proposed trucking uses on an individual basis through the conditional permit process, rather than permitting them to be allowed as a matter of right. The report noted that Soto "ha[d] made it clear that [his] objective is to establish the truck yard activity as a 'permitted use' and to avoid the requirement for a conditional use permit and to avoid having to address the impacts of such use on adjacent properties and on the public street system."

The proposed ordinance would impose a moratorium in response to Soto's application for a business license to operate a truck yard in the M-1 zoned area. The ordinance declared that although the M-1 zone was an appropriate place for trucking uses, the precise configuration of the streets in an area and the nature of neighboring properties could render particular properties either inappropriate for trucking uses, or appropriate only if specific conditions were placed on them. The ordinance stated "The

establishment of a draying, freighting, or trucking yard and/or terminal as a permitted use, without the ability to evaluate the operational characteristics and physical or site requirements of said operation that the conditional use permit process provides, would result in an immediate threat to the public health, safety or welfare, if the conditional use permit process is followed and a conditional use permit obtained, the threatened impacts may be avoided." Therefore, the ordinance provided that during the effective period of the ordinance (45 days from the date of adoption) or any extension thereof, no application for a business license for a draying, freighting, or trucking yard and/or terminal would be processed without a conditional use permit pursuant to the BMC.

The City Council adopted the ordinance at its meeting March 26, 2007. On March 27, 2007, the City wrote to Soto and advised him that "As discussed with your representatives at our March 21, 2007 meeting, the City Council reviewed and adopted Ordinance No. 1130 on March 26, 2007. . . . Please note that [draying, freighting, or trucking yard and/or terminal] uses are not to be barred but to be subject to regulation by conditional use permit (CUP). Should you wish to proceed with the establishment of a trucking yard at 9253 Artesia Boulevard, then you would need to have your proposal reviewed by the Development Review Board (DRB). Once the DRB completes their review of your proposal, you would need to submit a CUP application to be reviewed by the Planning Commission. At this time, your business license application cannot continue to be processed until a CUP is approved by the Planning Commission. Please be aware that the City Council will consider the extension of the interim moratorium on April 23, 2007."

On March 27, 2007, Soto's representative Michael Pauls wrote to Brian Lee, the City's Director of Community Development, pointing out that in his meeting of March 20, 2007, Lee had agreed that a trucking yard or trucking terminal as specified in the BMC was a permitted use in the M-1 zone not requiring discretionary approval from the City. Pauls took the position that in January, Soto's business license application had been rejected without justification and that Lee had agreed to accept Soto's business license application and assured Soto that the Planning Department would approve the

license. Lee asserted that he had advised Pauls at the March 20, 2007 meeting that the City was contemplating an emergency ordinance to require a conditional use permit in the M-1 zone for truck yards. Lee confirmed at the meeting that although a truck yard was a permitted by-right use in the M-1 zone, Lee would recommend to the City Council that it adopt a moratorium on by-right permits at its next meeting. Lee denied advising Soto that a truck yard was a principally permitted use that did not require discretionary approval, nor did he assure Soto or Pauls that the Planning Department would approve and issue a business license.

Soto contended that based upon Lee's representation, Soto made another business license application and was assured by Rafael Guzman of the City Planner's office that Guzman had approved the necessary zoning clearance and no additional information would be required. Pauls asserted that prior to March 27, 2007, his office had never received any notice from Guzman that Soto's business license application was in jeopardy. "Be advised that my client relied upon the assurances and accuracy of the information provided by yourself and Mr. Guzman with respect to the approval of the zoning clearance portion of his business license application in finalizing the purchase of the subject property located at 9253 Artesia Boulevard, Bellflower for the sum of nine hundred and sixty two thousand dollars. ($962,000.00)."

The City did not process Soto's second business license application.

Soto contended that on March 27, 2007, based upon his review of the BMC, receiving confirmation from the City Hall that his proposed use was absolutely permitted, and issuance of the business license was imminent, he closed escrow on the property and completed his purchase. On March 28, 2007, Soto received the City's letter informing him that a CUP would be required for approval of his business license.

On April 23, 2007, the City voted to extend the moratorium on draying, freighting, or trucking yard and/or terminal permits that were not evaluated using the conditional use

permitting process for an additional 10 months and 15 days. The City adopted Ordinance No. 1132 extending the moratorium until March 28, 2008.[4]

2. Soto's Petition for Writ of Mandate.

On July 30, 2007, Soto filed a petition for writ of mandate pursuant to Code of Civil Procedure sections 1085 and 1094.5. He sought an order requiring the City to issue him a business license for a draying, freighting, or trucking yard and/or terminal pursuant to the City's ordinances and other laws that existed at the time of his business license application and for a declaration of the rights and obligations of the parties. Soto argued that the City had a ministerial duty to process his business license application and apply the law that existed at the time of his application. He further contended that the City refused to process the business license application after the ordinance was adopted and never issued a decision upon which an administrative appeal was allowed.

In opposition, the City contended that Soto's petition should be denied because he failed to exhaust administrative remedies by appealing the Planning Commission's determination or applying for a conditional use permit pursuant to Ordinance No. 1150; the moratorium was properly enacted and applied to Triumph; Triumph had no possessory interest in the property at the time it sought the business license; and Triumph acquired the property subject to knowledge that a conditional use permit would be required.

The trial court issued a tentative ruling in which it concluded Triumph did not need to exhaust administrative remedies because any appeal by Triumph would have been futile: the City passed the moratorium only days before its notice of refusal, making it impossible for Triumph to successfully appeal the decision not to issue a license without a conditional use permit. However, the court tentatively concluded that Triumph had no vested right in the permit and therefore had to comply with the moratorium under *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639 (*Davidson*).

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[4] On November 26, 2007, the City adopted Ordinance No. 1150 amending BMC section 19-12 to require a CUP for a draying, freighting, or trucking yard and/or terminal operated in the M-1 zone. The ordinance was effective December 26, 2007.

After argument by counsel, the court granted the petition, stating that the matter "boil[ed] down" to whether Soto had a vested right in the business license, and under *Davidson* the ordinance could only apply if Soto's proposed business created a condition dangerous to the public health or safety. Because nothing in the record supported a finding that trucking in a commercial business district would be a danger to public health and safety, the court concluded that the emergency moratorium did not meet the requirements of *Davidson.* The trial court entered judgment in favor of Triumph, but the judgment did not provide for a writ compelling the City to issue Triumph a business license, nor was a writ issued.

DISCUSSION

I. STANDARD OF REVIEW.

The parties dispute whether the substantial evidence or abuse of discretion standard applies. The City contends that under traditional mandamus (Code Civ. Proc., § 1085) we review its decision for abuse of discretion. (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547-548 (*American Board*).) Triumph contends that because the issue in this case is whether the City had a legal obligation to process its business license application under the BMC as it existed at the time it was submitted, we must determine whether substantial evidence supports the trial court's findings.[5]

A writ of traditional mandamus (Code Civ. Proc., § 1085) may be used to compel the performance of a duty that is purely ministerial in nature or to correct an abuse of discretion. (*American Board, supra,* 162 Cal.App.4th at p. 547.) The trial court and appellate court perform the same function in a traditional mandamus action, and we

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[5] Although Triumph brought its proceedings in the trial court pursuant to both traditional mandamus (Code Civ. Proc., § 1085) and administrative mandamus (Code Civ. Proc., § 1094.5), the appropriate proceeding was traditional mandamus. (*Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 795 (*Bright Development*) [traditional mandamus proper where legislative body acts without power or refuses to obey plain mandate of the law].)

therefore do not undertake a review of the trial court's findings or conclusions. (*Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1392.) We consider the administrative record to determine whether the City abused its discretion, namely, whether its decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (*Bright Development, supra,* 20 Cal.App.4th at p. 795; see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Commission* (1999) 21 Cal.4th 352, 361.) Indeed, such nonadjudicatory acts "are accorded the most deferential level of judicial scrutiny." (*Pulaski v. Occupational Safety & Health Standard Board* (1999) 75 Cal.App.4th 1315, 1331.)

Unless otherwise provided by law, "the petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd*. (1995) 10 Cal.4th 1133, 1154.) Thus, it is Triumph's burden to establish that City's decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (See *Fair v. Fountain Valley School Dist*. (1979) 90 Cal.App.3d 180, 187.)

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

The City argues that Triumph failed to exhaust its administrative remedies because it could have appealed the decision of the Planning Commission and the City's refusal to issue a business license, or applied for a business license pursuant to a conditional use permit.

Under the doctrine of exhaustion of administrative remedies, a party must obtain a decision from the final administrative decisionmaker before bringing an action in court. (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 594.) The exhaustion requirement permits the agency to correct any deficiency, avoid costly litigation, and also facilitates the development of a factual record to assist in later judicial review. (*Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, 501; *Campbell v. Regents of the University of California* (2005) 35 Cal.4th 311, 322.)

The exhaustion requirement contains numerous exceptions, including as relevant here, when the aggrieved party can positively state what the administrative agency's decision in his or her particular case would be. (*Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834 (*Ogo Associates*).) In *Ogo Associates*, a landowner obtained financing for a building permit for an apartment project in an R-3 zone, a zone where such projects were permitted. Before the permit was issued, the City Council imposed an emergency moratorium on building permits; thereafter the City adopted a permanent ordinance changing the area's zoning to ML, a classification limited to light manufacturing. (*Id.* at p. 832.) The trial court denied the landowner's request for a writ of mandate to compel the city to issue the permit, finding that the ordinances were proper; the landowner had not satisfied the conditions for issuance of a building permit at the time of the moratorium; and the landowner had not exhausted its administrative remedies by applying for a variance from the rezoning ordinance. (*Ibid.*) *Ogo Associates* concluded that although the city could properly impose a moratorium, the landowner was excepted from the exhaustion doctrine because the record demonstrated the city rezoned the area because of the landowner's project, and it was inconceivable the city would grant a variance for the very project which had brought about the rezoning. "To require [the landowner] to apply to the city council for a variance on behalf of this project would be to require them to pump oil from a dry hole." (*Id.* at p. 834.)

The same result follows here. Triumph was the target of the moratorium; the City would not have exempted Triumph from obtaining a conditional use permit, rendering the likely result of any administrative action by Triumph certain. Therefore, Triumph need not have pursued futile administrative remedies before seeking mandamus.

III. THE CITY PROPERLY IMPOSED A MORATORIUM.

The City argues that Triumph had no vested right in the present or future zoning of the property, and that, because Triumph had no vested right, under *Davidson* an analysis of the validity of the moratorium was improper. Further, for an emergency moratorium to be valid, it asserts only the facts constituting the emergency need be recited, and courts cannot consider the accuracy of those recitations. Finally, it argues that statements made

by City employees cannot create an estoppel. Triumph argues the moratorium could not affect it and the City was obligated to issue it a license under M-1 zoning as it existed at the time of its initial business license application because an urgency ordinance does not apply to an application submitted before the effective date of the ordinance; where the legal requirements have been met, issuance of the license is a ministerial act.

A. Triumph Had No Vested Right in the City's Zoning Ordinances.

Governmental agencies may apply new laws retroactively if the intent to do so is clear. However, retrospective application may only impair vested rights through exercise of subsequent police power enactments if necessary to protect the public health or safety. (*Davidson, supra*, 49 Cal.App.4th at pp. 646, 648-649.)

Under the judicial vested rights doctrine, a property owner may acquire a vested right where he or she has expended money in reliance on an issued permit. (*Davidson, supra,* 49 Cal.App.4th at p. 646.) A property owner cannot acquire a vested right against future zoning without having first acquired a permit and expended monies in reliance on it. (*Anderson v. City Council of the City of Pleasant Hill* (1964) 229 Cal.App.2d 79, 89.) It "is beyond question that a landowner has no vested right in existing or anticipated zoning." (*Oceanic California, Inc. v. North Central Regional Commission* (1976) 63 Cal.App.3d 57, 70.) Triumph could obtain no vested right in the existing M-1 zoning because it had neither acquired a permit, nor had it expended any monies in reliance on an issued permit.

Even if we were to find Triumph had acquired a vested right in the provisions of the City's M-1 zoning and that it was required to have a permit issued based upon the law in effect at the time of the application, those vested rights could still be impaired where necessary to protect public health or safety. (*Davidson, supra,* 49 Cal.App.4th at p. 648.) In determining whether an impairment of a vested right passes constitutional muster, we consider the nature and extent of the impairment and the nature, importance, and urgency of the interest to be served by the challenged legislation, and whether it was appropriately tailored and limited to the situation necessitating its enactment. (*Id.* at p. 649.)

Here, the City cited concerns over the operation of a trucking yard in an area where it could have significant impacts on traffic and neighboring residential uses. These concerns would justify an assertion of the City's police power to require Triumph to obtain a conditional use permit to evaluate the impacts of his proposed business on the community.

B. The City Validly Enacted An Emergency Moratorium and Was Not Obligated to Issue Triumph a Business License Under Its Former M-1 Zoning.

The City contends that under Government Code section 65858, it legitimately declared a moratorium on the issuance of permits in the M-1 zone without a conditional use permit. Under section 65858, it contends it needed only to show that it needed to preserve its planning options and avoid disrupting pending planning initiatives. Triumph does not respond to the City's argument concerning the validity of the moratorium, but contends it was entitled to the ministerial issuance of a permit without a conditional use evaluation.

Government Code section 65858 governs the adoption of interim and emergency ordinances.[6] It permits a local legislative body to prohibit land uses that may conflict with a land use measure that the legislative body is studying or intends to study within a reasonable period of time. (*216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 869.) Interim ordinances may be enacted without prior notice and

[6] Government Code section 65858 provides in relevant part, "(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. . . . [¶] (c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare."

hearing. (*CEEED v. California Coastal Zone Conservation Commission* (1974) 43 Cal.App.3d 306, 314.)

In enacting an emergency ordinance, the term "public health" is interpreted according to the circumstances. Generally, it means the "'wholesome condition of the community at large.'" (*Crown Motors* (1991) 232 Cal.App.3d 173, 178.) A city council has broad powers to enact ordinances to maintain public health. (*Ibid.*) Recitals of a legislative body that adoption of the interim zoning ordinance is necessary to protect public health, safety and welfare and that the planning commission was conducting or intended to conduct studies within a reasonable time for the purpose of recommending the adoption of a permanent zoning ordinance are presumed to be valid. (*Mang v. County of Santa Barbara* (1960) 182 Cal.App.2d 93, 98.) "Where the ordinance recites facts that constitute the urgency and those facts may reasonably be held to constitute an urgency, the courts will neither interfere with nor determine the truth of those facts." (*216 Sutter Bay Associates, supra,* 58 Cal.App.4th at p. 868.)

Here, Triumph's business license application triggered a reexamination of previous concerns the City had about the operation of truck yards in its boundaries. The City found that permitting a trucking yard in the M-1 zone without the additional scrutiny afforded by a conditional use permit was contrary to public health and safety due to the hazards and challenges posed by trucks operating on a street that also contained (albeit nonconforming) residential uses. Further, the use of trucks on the adjoining streets presented ingress and egress issues that were unique. The urgency was presented by Triumph's objective to circumvent addressing the impacts of the proposed truck yard on the adjacent properties and public street system. These findings are sufficient under section 65858, and we conclude the emergency moratorium was validly enacted.[7] Thus, Triumph was not entitled to the by-right issuance of its permit.

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[7] Because we find that the City's moratorium was proper, we need not consider the City's argument that Triumph's proposed use required a conditional use permit regardless of the validity of the moratorium.

C. Statements By City Employees Did Not Create An Estoppel.

The City contends that statements its employees made to Soto that he could acquire a permit by right could not create an estoppel. Triumph contends that the City knew it intended to close escrow at the end of March 2007 and it relied on the City's employee's representations that there were no additional issues and Triumph's business license would be ready to pick up the day escrow closed.

Establishing equitable estoppel requires a showing that (1) the party to be estopped was apprised of the facts, (2) that party intended their conduct to be acted upon, or acted so that the party asserting estoppel had a right to believe it was so intended, (3) the other party must be ignorant of the true facts, and (4) the other party must rely upon the conduct to his or her injury. (*Driscoll v. Los Angeles* (1967) 67 Cal.2d 297, 305.) An estoppel requires all four elements. (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 257.)

However, a party faces "daunting odds" to establish estoppel against a governmental entity in a land use case. "Courts have severely limited the application of estoppel in this context by expressly balancing the injustice done to the private person with the public policy that would be supervened by invoking estoppel to grant development rights outside of the normal planning and review process. . . . The overriding concern 'is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits.' . . . Accordingly, estoppel can be invoked in the land use context in only 'the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow.'" (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 321.) In *Toigo*, the plaintiffs alleged that in rejecting their first application to subdivide a parcel, the Town of Ross led them to believe a second application would be accepted if it incorporated certain design specifications. The plaintiffs responded by redesigning the proposal, but the town denied their second application. (*Id.* at pp. 314-318.) The *Toigo* court refused to apply the doctrine of equitable estoppel. "Courts have yet to extend the vested rights or estoppel theory to

instances where a developer lacks a building permit or the functional equivalent, regardless of the property owner's detrimental reliance on local government actions and regardless of how many other land use and other preliminary approvals have been granted. To the contrary, it has been stated that '"[w]here no such permit has been issued, it is difficult to conceive of any basis for such estoppel."' [Citations.]" (*Id*. at p. 322.)

Here, Triumph cannot establish an estoppel. Principally, Triumph relies on the fact Soto interacted with the City's clerk, who told him that his business license would be forthcoming. However, Soto was fully aware at the time of the City Council meetings at which the City made it clear that it intended to impose a conditional use permit for all businesses that intended to open trucking yards or terminals. Triumph therefore cannot demonstrate that it was ignorant of the true state of facts, namely, that the City intended to require it to undergo the conditional permitting process. Furthermore, the mere fact that the City had not required a conditional use permit five years earlier does not create an estoppel in Triumph's favor because Triumph was aware the City's attitude towards such businesses in the M-1 zone had changed.

Finally, a balancing of the equities is not in Triumph's favor. To permit Triumph to obtain an estoppel based upon a city's employee's statements and thereby avoid the conditional permitting process would circumvent the City's ability to review and undertake planning for businesses operating in its boundaries. There is no injustice here in requiring Triumph to participate in the conditional permit process and undergo a review that will ensure that the City's needs for public health and safety are met.

DISPOSITION

The judgment of the superior court is reversed. Appellant is to recover its costs on appeal.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.